

MEDICAL CONTESTED CASE HEARING NO. 10073
M6-09-20391-01

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on November 5, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to left elbow MUA and possible arthroscopy with possible anterior capsular release for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JS, ombudsman. Respondent/Carrier appeared and was represented by MS, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury to her left elbow as a result of flipping a bag open to place food in it for a customer. Claimant was diagnosed with left elbow symptomatic synovial plica and lateral epicondylitis. On June 26, 2008, Dr. B, Claimant's treating doctor, performed a left elbow arthroscopy with debridement of posterolateral gutter and synovial plica and open debridement of the extensor carpi radialis brevis and repair of the extensor manus. Despite physical therapy and a home exercise program, Claimant has a 30 degree elbow flexion contracture, limited range of motion and pain. Dr. B requested left elbow manipulation under anesthesia and possible arthroscopy with possible anterior capsular release which was denied by Carrier and referred to an IRO who determined that the recommended procedure was not medically necessary.

The IRO reviewer, a doctor of medicine, board certified orthopedic surgeon concluded:

The patient's persistent stiffness is most (sic) related to underlying osteoarthritis in the elbow. Although capsular release may be helpful, there is no documentation of an attempt of dynamic splinting. This should be tried prior to surgical intervention. An intraarticular steroid injection may also help alleviate some pain. Based on the medical records provided, the request for surgery is not medically reasonable or necessary.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) as health care that is clinically appropriate and considered effective for the injured

employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

With regard to the requested procedures, the ODG provides as follows:

MANIPULATION UNDER ANESTHESIA (MAU)

Not recommended. No quality studies. In case series outcomes for stiff elbow may be no better than the natural history of the condition. (Duke, 1991)

SURGERY FOR EPICONDYLITIS

Under study. Almost all patients respond to conservative measures and do not require surgical intervention. Treatment involves rest, ice, stretching, strengthening, and lower intensity to allow for maladaptive change. Any activity that hurts on extending or pronating the wrist should be avoided. With healing, strengthening exercises are recommended. Patients who are recalcitrant to six months of conservative therapy (including corticosteroid injections) may be candidates for surgery. There currently are no published controlled trials of surgery for lateral elbow pain. Without a control, it is impossible to draw conclusions about the value of surgery. Generally, surgical intervention may be considered when other treatment fails, but over 95% of patients with tennis elbow can be treated without surgery. (Buchbinder-Cochrane, 2002) (California, 1997) (Piligian, 2000) (Foley, 1993) (AHRQ, 2002) (Theis, 2004) (Jerosch, 2005) (Balk, 2005) (Sennoune, 2005) (Szabo, 2006) Disappointing results of surgery were found in litigants with epicondylitis. (Kay, 2003) (Balk, 2005) Surgery is not very common for this condition. In workers' compensation, surgery is performed in only about 5% cases.

(WLDI, 2007) For the minority of people with lateral epicondylitis who do not respond to nonoperative treatment, surgical intervention is an option. The surgical techniques for treating lateral epicondylitis can be grouped into three main categories: open, percutaneous, and arthroscopic. Although there are advantages and disadvantages to each procedure, no technique appears superior by any measure. Therefore, until more randomized, controlled trials are done, it is reasonable to defer to individual surgeons regarding experience and ease of procedure. (Lo, 2007)

Claimant argued that the Duke study referenced in the ODG indicated that after well-supervised rehabilitation failed MUA should be considered for dysfunctional elbow range of motion. Out of eleven subjects in the Duke study 55% had improvement. Claimant also maintained that the ODG does not require any form of treatment before MUA. The ODG indicated there were no quality studies and stated, "In case series outcomes for stiff elbow may be no better than the natural history of the condition," when it referenced the Duke study. Furthermore, the ODG indicated that surgery for epicondylitis was under study, that almost all patients respond to conservative measures, do not require surgical intervention, that there were no controlled trials of surgery for lateral elbow pain, that 95% of patients with tennis elbow could be treated without surgery, and that in workers' compensation, surgery was performed in only 5% of the cases.

In Dr. B's answers to specific questions he noted that he did not have the ODG, and he failed to provide any studies or trials to support the necessity of the requested procedure. Accordingly, Claimant failed to present evidence-based medical evidence as to the appropriateness of the proposed procedures.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was the employee of (Employer) when she sustained a compensable injury.
2. Carrier delivered to petitioner and Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Left elbow MUA and possible arthroscopy with possible anterior capsular release is not health care required for the compensable injury on _____.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.

2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that left elbow MUA and possible arthroscopy with possible anterior capsular release is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to left elbow MUA and possible arthroscopy with possible anterior capsular release for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
225 EAST JOHN CARPENTER FREEWAY STE 1300
IRVING, TX 75062-2281**

Signed this 18th day of November, 2009.

Sarah Wiegand
Hearing Officer